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SERVICE DATE – DECEMBER 19, 2005

DO

FR-4915-01-P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34789]

Dakota, Minnesota & Eastern Railroad Corporation—Trackage Rights Exemption—
BNSF Railway Company

BNSF Railway Company (BNSF) has agreed to supplement existing trackage rights of the Dakota, Minnesota & Eastern Railroad Corporation (DM&E) at Aberdeen, SD, as explained herein. DM&E has existing trackage rights on BNSF's track at Aberdeen pursuant to a 1975 agreement between the Chicago, Milwaukee, St. Paul & Pacific (predecessor-in-interest of BNSF) and the Chicago and North Western Transportation Company (predecessor-in-interest of DM&E), which agreement was amended in 1986 (the 1975 agreement and the 1986 amendment are collectively referred to herein as the Agreement). The State of South Dakota, acting through the State Department of Transportation, as successor-in-interest to the South Dakota Railroad Authority (herein referred to as the State), owns the tracks between Aberdeen and Kidder, SD (herein referred to as the Rail Line). In addition to the trackage and interchange rights granted under the Agreement, BNSF will permit DM&E and the State (or the State's designee, i.e., the State's contract operator acting as agent for the State) to interchange DM&E's traffic at Aberdeen in connection with the movement of traffic moving to, from, or via the Rail Line pursuant to the provisions outlined below.

(1) BNSF will permit DM&E and the State (or the State's designee) to interchange with one another in BNSF's Aberdeen Yard via the Interchange Access Line (the tracks on BNSF's Geneseo Subdivision between mileposts 118.60 and 115.08) without restrictions for traffic which either originates or terminates on the Rail Line.

(2) BNSF will permit DM&E and the State (or the State's designee) to interchange with one another at Aberdeen Yard via the Interchange Access Line for traffic originating or terminating on DM&E in South Dakota, moving to or from points served by Canadian Pacific Railway's (CP's) network as it existed as of April 25, 2005 in: (a) North Dakota (not including the Dakota, Missouri Valley & Western Railroad or CP-affiliated shortlines) other than to or from industries which are (as of April 25, 2005) jointly served by CP and BNSF (e.g., industries at Valley City and Minot); and (b) Canada (including, but not limited to, Canadian export ports and CP-affiliated shortlines), provided such interchange rights extend only to movements of agricultural commodities (STCC's 01 and 20), fertilizers, ethanol, bentonite clay, and forest products, and further subject to certain unit train restrictions pertaining to North Dakota points.

(3) BNSF will permit DM&E to use the Interchange Access Line in conjunction with DM&E's existing trackage rights in order to facilitate interchange of cars between DM&E and the State, by and through the State's designee, on the State-owned trackage north of Aberdeen, subject to certain restrictions.

The trackage rights granted by BNSF were scheduled to become effective on or after December 6, 2005. The purpose of the trackage rights is to allow DM&E to enjoy, at Aberdeen, expanded interchange access for traffic moving to, from, or via the Aberdeen-Kidder Line.

As a condition to this exemption, any employees affected by the trackage rights will be protected by the conditions imposed in Norfolk and Western Ry. Co.—Trackage Rights—BN, 354 I.C.C. 605, 610-15 (1978), as modified in Mendocino Coast Ry., Inc.—Lease and Operate, 360 I.C.C. 653, 664 (1980).

This notice is filed under 49 CFR 1180.2(d)(7). If it contains false or misleading information, the exemption is void ab initio. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34789, must be filed with the Surface Transportation Board, 1925 K Street, N.W., Washington, DC 20423-0001. In addition, a copy of each pleading must be served on DM&E's representative: Michael J. Barron, Jr., FLETCHER & SIPPEL LLC, 29 North Wacker Drive, Suite 920, Chicago, IL 60606-2875.

Board decisions and notices are available on its website at
“WWW.STB.DOT.GOV.”

Decided: December 9, 2005.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams

Secretary